

Agenda Item Form

Agenda Date: 09/14/04

Districts Affected: All

Dept. Head/Contact Information: Alejandrina Drew, Director 541-4481

Type of Agenda Item:

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Staffing Table Changes | <input type="checkbox"/> Board Appointments |
| <input type="checkbox"/> Tax Installment Agreements | <input type="checkbox"/> Tax Refunds | <input type="checkbox"/> Donations |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer | <input type="checkbox"/> Item Placed by Citizen |
| <input type="checkbox"/> Application for Facility Use | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input type="checkbox"/> Other _____ | | |

Funding Source:

- ☒ General Fund
- ☐ Grant (duration of funds: _____ Months)
- ☐ Other Source: _____

Legal:

- ☒ Legal Review Required Attorney Assigned (please scroll down): John Nance ☒ Approved ☐ Denied

Timeline Priority: ☒ High ☐ Medium ☐ Low # of days: _____

Why is this item necessary:

A Resolution to allow the Mayor to sign a contract with Theatre Inc./Outrageous Fortune Theatre Company for a grant of \$6,000 awarded under the Arts and Culture Department's El Paso Festivals and Cultural Events as recommended for approval by the Arts and Culture Advisory Board, September 9, 2004

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:
\$6,000 contract for event.

Statutory or Citizen Concerns:

NONE

Departmental Concerns:

NONE

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign the following contract on behalf of the Arts and Culture Department to be funded through the FY2005 El Paso Festivals and Cultural Events program of the Arts and Culture Department, as recommended by the Arts and Culture Advisory Board and Staff. All Districts.

ORGANIZATION	AMOUNT
1. Theatre Inc./Outrageous Fortune Theatre Company	\$6,000.00

PASSED AND APPROVED this 14th day of September, 2004.


CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



John F. Nance
Assistant City Attorney

APPROVED AS TO CONTENT:



Alejandrina Drew, Director
Arts and Culture Department

THE STATE OF TEXAS)
)
COUNTY OF EL PASO) **CONTRACT**

This Contract is made this _____ day of _____, 2004, by and between the **CITY OF EL PASO**, a Texas municipality, hereinafter referred to as the “City,” and **THEATRE INC./OUTRAGEOUS FORTUNE THEATRE COMPANY**, an IRS Section 501(c)(3) nonprofit arts organization, hereinafter referred to as the “Contractor.”

WHEREAS, the City desires to provide its local citizens with a variety of high quality cultural programs; and

WHEREAS, the City desires to respond to the needs and encourage the creativity of local artists and cultural organizations; and

WHEREAS, the City desires to respond to the cultural needs of the local ethnic and distinct communities and to promote the development of arts based in those communities; and

WHEREAS, the City desires to encourage artistic interchanges and cooperative ventures that bring together distinct communities and organizations, and in so doing, reflect the diversity of the City’s cultural heritage; and

WHEREAS, The City Council has approved and adopted a budget for the fiscal year beginning September 1, 2004, and ending August 31, 2005.

NOW, THEREFORE, the City and the Contractor do hereby mutually agree as follows:

1. The City hereby appropriates SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00) in funding from the City’s Arts and Culture Department (ACD) to provide the Contractor with **FESTIVAL SUPPORT** to perform the services hereinafter provided for.

2. The Contractor hereby certifies that the Festival as described in the final application will not be altered and will conform to the original intent of the application, including but not limited to Festival dates, locations, size and scope, artistic nature, key participants and financial scope. Contractor may not make any modification to the Festival without the prior

written consent of ACD. Any reduction in the Festival dates or locations, or in size or scope of the Festival shall result in a corresponding reduction of the consideration to be provided to the Contractor.

3. The Contractor hereby agrees and binds itself to do whatever is necessary to perform and carry out the following:

- a. During the Contract period, provide the services, activities, and performances in accordance with Attachment "A," which is attached hereto and hereby made a part of this Contract and hereinafter referred to as "Festival." Any reduction in the services, activities, or performances from those described in Attachment "A" shall be subject to a reduction in compensation to the Contractor in accordance with the provisions of Paragraph 2 above.
- b. Complete and forward to the City of El Paso Arts and Culture Department an acceptable final report and numbered invoice dated no earlier than the completion of the Project or the completion of the final report, including all receipts that document actual expenditures for the (i) total award of ACD funds, and (ii) the cash match requirement, as identified in the "Applicant's Budget" not later than September 15, 2005, or 30 days after festival is completed, whichever is first. Receipts should consist of one of the following: (i) supporting documentation such as invoices to substantiate the request (invoices shall include the name of the person or vendor, date, purpose of expenditure and check number, which paid the expenditure. Invoices should also be stamped as "paid" to ensure they are not paid more than once.); or (ii) photocopy of actual check, cancelled check or check stubs (Photocopy should be of front and back of cleared check. If cancelled checks are not available the City requires applicable bank statements as described below.); or (iii) photocopy of applicable bank statements that reference the checks paid. The City of El Paso must ensure that funds have been expended prior to reimbursing the grantee. Contractor will submit one signed original and one (1) copy of each such report.
- c. Abide by the City of El Paso Arts and Culture Department El Paso Festivals and Cultural Projects Funding Guidelines as amended by City Council, a copy of which is on file in the City of El Paso Arts and Culture Department's office.

4. The Contractor shall keep complete and accurate books and records indicating when, how, by whom, and for what purposes the funds received under this Contract are spent by the Contractor, and the Contractor shall make such books and records available to the City for examination upon request. All funds disbursed under this Contract shall be handled by the

Contractor in accordance with the standards of the American Institute of Certified Public Accountants, which include provisions for sound fiscal practices and fiscal reporting. In addition, the Contractor shall furnish the City at its request with balance sheets and statements of operation, which accurately account for the expenditure of agreement funds, and a written narrative report reflecting same. If any serious discrepancy should appear in such reports or statements, the City shall notify the Contractor. If such discrepancy is not rectified to the satisfaction of the City within 30 days, the City may withhold all or part of the funds from the Contractor. "Serious discrepancy" shall mean violation of an existing statute or ordinance or an expenditure of Contract funds for a purpose which is not authorized by this Contract. **Should the City determine that any provision of this Contract has been violated, the City may terminate this Contract immediately. Written notice of termination will be sent to the Contractor.**

5. The term of this Contract shall run from the date of execution and shall terminate August 31, 2005, or thirty (30) days after the completion of the Festival.

6. The total award from City funds will be payable upon submission of an invoice and the final report due on September 15, 2005, or thirty days after the completion of Festival, whichever is first based. The final report form is available from the Arts and Culture Department. Total compensation will be SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00). The City shall make all payments in accordance with its fiscal year and usual accounting procedures. The Contractor shall provide a numbered and dated invoice and one original and one copy of the final report accompanied by complete, detailed receipts documenting expenditure of the total award and cash match.

7. The entire compensation amount from ACD will be payable upon submission of the final report and invoice, which are due, on September 15, 2005, or thirty days after the completion of program, whichever is first. Payment shall be authorized only after the project has

been completed and the final report and invoice for the contracted amount have been received by the Arts and Culture Department and the City Comptroller processes the invoice.

8. The Contractor shall include in **ALL** printed programs, posters, and flyers the following credit line: **“WITH THE SUPPORT OF THE CITY OF EL PASO ARTS AND CULTURE DEPARTMENT.”** The credit line should be prominent, readable and equitable in size to other supporter/sponsor acknowledgments. For all visual arts projects or events, the credit line must also be included on invitations and exhibition announcements. Any additional printed credit is optional. In the case of public art works (i.e. murals, outdoor sculpture) the credit line shall be included in invitations and as part of the work or as part of a permanent plaque or sign to be affixed to the art work. Visual arts projects must also include the credit line in the invitations for such events. The ACD logo may NOT be used in any printed materials. The Arts and Culture Department Staff will be available to review layouts of printed materials prior to printing, and Contractor is encouraged to confer with the ACD Staff prior to printing in order to avoid any conflicts and ensure that contractual obligations outlined herein are complied with. When no printed program is used, VERBAL CREDIT SHALL BE GIVEN PRIOR TO EACH PRESENTATION. Copies of such printing and program materials as prepared for all activities must be forwarded to the Arts and Culture Department, as part of the final report. **Failure to comply with this provision will constitute a breach of contract and result in the immediate cancellation of the award.**

9. Nothing contained herein shall be construed as creating the relationship of employer and employee between the City and the Contractor, and the Contractor shall be deemed at all times to be an Independent Contractor. The City shall not be subject to any obligations or liabilities incurred by the Contractor in the performance of the services described in this Contract unless otherwise herein authorized.

10. In order to provide members of the **CITY OF EL PASO ARTS AND CULTURE DEPARTMENT BOARD AND STAFF** an opportunity to evaluate the caliber of funded events, **THE CONTRACTOR SHALL SEND TO THE ARTS AND CULTURE DEPARTMENT, IN A TIMELY MANNER, A SCHEDULE OF EVENTS AND OTHER PERTINENT INFORMATION ABOUT ALL FUNDED EVENTS.**

11. Contractor agrees to indemnify and hold the City, its officers, employees, agents and servants harmless from any claims for injury, death, loss or damage of any kind or character and by whomsoever suffered or asserted occasioned by or in connection with any services performed by Contractor under this Contract, either while its services are in progress or as a result of services performed by it.

12. For the purpose of this Contract, **THE CONTRACTOR SHALL BE HELD RESPONSIBLE FOR OBTAINING APPROPRIATE PERMISSION TO USE AND INCORPORATE COPYRIGHTED MATERIALS INTO ANY PERFORMANCE.** In addition, the Contractor shall indemnify, defend, and hold the City harmless from any claims or causes of action which might arise from use of any such materials.

13. For the purpose of determining place of agreement and law governing same, this Contract is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas, and venue shall lie in El Paso County.

14. This Contract may be modified by the parties by written amendment and mutual agreement of the parties hereto. Should either party wish to modify this Contract, the party shall give thirty (30) days' written notice to the other party as follows:

CITY:

City of El Paso
Attention: Mayor's Office
Two Civic Center Plaza
10th Floor
El Paso, Texas 79901-1196

COPY TO: Arts and Culture Department
Two Civic Center Plaza
6th Floor
El Paso, Texas 79901-1196

CONTRACTOR: Theatre Inc./Outrageous Fortune Theatre Company

15. This Contract may be terminated in whole or in part by the City by giving thirty (30) days' written notice of termination to the Contractor, and specifying the extent to which performance under the Contract is terminated. Such right of termination is in addition to and not in lieu of rights of the City set forth in Paragraph 19, herein.

16. This Contract supersedes any prior agreement between the parties hereto and constitutes and expresses the whole agreement of the parties hereto in reference to the services provided by the Contractor for the City and in reference to any of the matters or things herein provided for or herein before discussed or mentioned in reference to such services, all promises, representations, and understandings relative thereto being herein merged.

17. The Contractor shall comply with all applicable federal, state, and local laws and regulations, including City ordinances, as outlined in the current ACD El Paso Festivals and Cultural Projects Program Guidelines, including the following: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 et seq.); Section 504 of the Rehabilitation Act of 1973 (24 U.S.C. § 794); the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101-12213); Drug Free Workplace Act of 1988 (41 U.S.C. §§ 702 et seq.); Debarment (45 C.F.R. pt. 1154), Federal Debt Status (OMB Circular A-129) Native American Graves Protection and Reparation Act of 1990 (25 U.S.C. 3001 et seq.), State Tax Code, Section 351.101, regulating expenditure of hotel/motel tax revenues; and **City of El Paso Ordinance #9779**, regarding Accessibility.

18. It is understood and agreed that the terms and conditions of the final grant application in Attachment “A” submitted by Contractor, which are incorporated herein and made a part hereof, will be complied with by the Contractor in all respects.

19. Failure to comply with all provisions outlined in this Contract or the current El Paso Festivals and Cultural Projects Program Guidelines may constitute a breach of contract as well as an inability to qualify for future City Funding. Financial penalties for breach of contract will be assigned and may include, but not be limited to, the withholding of payments or immediate cancellation of the Contract.

(Signatures on following page)

WITNESS THE FOLLOWING SIGNATURES AND SEAL:

CITY OF EL PASO

Joe Wardy, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

CONTRACTOR: THEATRE INC./OUTRAGEOUS FORTUNE
THEATRE COMPANY

Signature: _____

Print Name: _____

Title: Authorized Official/Chairman of the Board

Signature: _____

Print Name: _____

Title: Festival/Treasurer

APPROVED AS TO FORM:

John F. Nance
Assistant City Attorney

APPROVED AS TO CONTENT:

Alejandrina Drew, Director
Arts and Culture Department